IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Inventor(s):	Edward Alan Clark		
Case No.:	LUC-433/Clark 10	**Examiner**	Joseph T. Phan
Serial No.:	10/698,141	**Art Unit:**	2614
Filing Date:	10/31/2003		
Title:	SERVICE(S) PROVIDED TO TELEPHONY DEVICE THROUGH EMPLOYMENT OF DATA STREAM(S) ASSOCIATED WITH CALL		

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being sent via facsimile transmission to Commissioner for Patents, Mail Stop Amendment, Group Art Unit 2614, Attention: Examiner Joseph T. Phan, P.O. Box 1450, Alexandria, VA 22313-1450, at fax number (571) 273-8300, on April 28, 2010.

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Date of Signature: April 28, 2010

Commissioner for Patents
Mail Stop Amendment
Group Art Unit 2614
Attention: Examiner Joseph T. Phan
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection of this application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated on the attached sheets.

REMARKS

Claims 1, 3-11, 13-19 and 21-22 are pending in the application. Claims 1, 3-11, 13-19 and 21-22 were rejected under 35 U.S.C. § 103 (a).

Rejection Under 35 U.S.C. § 103 (a)

Claims 1, 3-11, 13-19 and 21-22 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over U. S. Patent Number 7,336,771 issued to Crockett et al. on February 26, 2008 in view of U. S. Patent Number 6,704,394 issued to Kambhatla on March 9, 2004.

Applicant respectfully traverses this ground of rejection for the following reasons. First, applicant's claim 1 recites,

> "a Customer Premise Equipment (CPE) application server component that provides one or more services to a telephony device on a call through establishing one or more data streams associated with the call, the one or more services selectively determined by a user of the telephony device; and
>
> an application server component with which the CPE application server component communicates to provide the one or more services through employment of one or more protocols to establish the one or more data streams, wherein at least one of the one or more protocols is a User Datagram Protocol (UDP)."

As stated in the Final Office Action, Crockett does **not** teach or suggest a User Datagram Protocol (UDP). Crockett discloses other packet-switched network transmission protocols, e.g., SIP, TCP/IP, etc., however, Crockett fails to disclose UDP. See column 28, lines 45-53.

The Examiner proposes to combine Crockett with Kambhatla because of Kambhatla's alleged teaching of UDP. The Examiner has asserted that it would be obvious to those of ordinary skill to combine Crockett with Kambhatla for Kambhatla's alleged teaching of UDP because "Crockett discloses that his invention is not limited to the aforementioned protocols and that related protocols are considered equivalents and

therefore as Kambhatla discloses UDP in the same breadth as the TCP/IP protocol used in Crockett and are related protocols".

As known by those skilled in the art, TCP and UDP are transport layer 4 protocols and IP is a network layer 3 protocol. However, TCP is a connection-oriented protocol provided on top of IP to guarantee packet delivery by tagging each packet. Lost or out of order packets are detected and then the source supplies a responsive retransmission of the packet to destination. By contrast, UDP is a connectionless protocol that eliminates the overhead of the retransmission mechanism of TCP, and does **not** make a guarantee that every sent packet will be received. In other words, TCP provides error checking and correction, but UDP does **not** provide error checking and correction. Since TCP is a connection-oriented protocol that guarantees packet delivery by tagging each packet and UDP is a connectionless protocol that does **not** make a guarantee that every sent packet will be received, then UDP and TCP/IP can**not** be considered equivalent protocols as asserted by the Examiner. Thus, it would **not** be obvious to those of ordinary skill in the art to substitute TCP/IP with UDP by combining Crockett with Kambhatla.

Second, while applicant agrees that Kambhatla discloses UDP as one possible communication protocol to be used, Kambhatla does **not** utilize UDP in the manner recited in applicant's claim 1. Specifically, Kambhatla discloses UDP in the context of a client computer that sends commands to a voice mail remote access server (VMRAS) 200 over a data network interface 291. See column 6, lines 3-5. In effect, Kambhatla's customer provided equipment, i.e., client computer, uses UDP to communicate with a network-based server, i.e., VMRAS 200. By contrast, applicant's claim 1 requires the use of UDP for communications between two network-based servers, i.e., an application server component and the CPE application server. **Since Kambhatla utilizes UDP for CPE to network-based server communications rather than network-based server to network-based server communications**, then Kambhatla does **not** utilize UDP as recited in applicant's claim 1. Thus, Kambhatla, similar to Crockett, is missing the "an application server component with which the CPE application server component communicates to provide the one or more services through employment of one or more protocols to establish the one or more secondary signaling data streams, wherein at

least one of the one or more protocols is a User Datagram Protocol (UDP)" elements, as recited in applicant's claim 1.

Therefore the proposed combination of Crockett and Kambhatla does not teach or suggest all of the limitations of applicant's claim 1, and therefore claim 1 is allowable over the proposed combination. Since claims 3-11, 13-16 and 21-22 depend from allowable claim 1, these claims are also allowable over the proposed combination.

Independent claim 17 has a limitation similar to that of independent claim 1, which was shown is not taught by the proposed combination of Crockett and Kambhatla. For example, claim 17 recites, "providing one or more services to a telephony device on a call through employment of one or more protocols to establish one or more data streams between the CPE application server and the application server components associated with the call, the one or more services selectively determined by a user of the telephony device, wherein at least one of the one or more protocols is a User Datagram Protocol (UDP)". The proposed combination of Crockett and Kambhatla does **not** teach or suggest this limitation for the above-mentioned reasons. Therefore, claim 17 is likewise allowable over the proposed combination. Since claims 18-19 depend from claim 17, these dependent claims are also allowable over the proposed combination.

Third, applicant respectfully objects to the Examiner's use of Official Notice to reject claim 21 which recites,

> "wherein another one of the one or more protocols is a Bearer Independent Call Control (BICC) protocol."

Applicant's claimed invention provides a novel technique of providing services through employment of data streams associated with a call. Applicant's technique was **not** common knowledge nor practiced in the art prior to the filing date hereof. Applicant respectfully requests that a reference document be cited as the basis for the rejection of applicant's claim 21.

Conclusion

In view of the above remarks, withdrawal of the rejections and/or reversal of the rejections of all claims pending is respectfully requested.

If a telephone conference would be of assistance in advancing the prosecution of this application, feel free to call applicant's attorney.

Respectfully submitted,

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